IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

Crl.Rev.Pet.No. 3548 of 2007()

CRA.149/2003 of ADDL. SESSIONS COURT (ADHOC), KALPETTA
CC.406/1999 of JUDL.MAGISTRATE OF FIRST CLASS, MANANTHAVADY

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REVN. PETITIONER: REVISION PETITIONER/APPELLANT/ACCUSED

V.K.USMAN, AGED 39 YEARS,
S/O KUNJABDULLA, VATTAKOLLY VEEDU KATTAYADE,
7/4 VELLAMUNDA P.O., WAYANAD DISTRICT.

BY ADV. SRI.P.K.JOSE

RESPONDENTS: RESPONDENTS

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1. STATE OF KERALA, REPRESENTED BY
SI OF POLICE, VELLAMUNDA POLICE STATION,
CRIME NO.59/1999 VELLAMUNDA POLICE STATION,
WAYANAD DISTRICT.

2. STATE, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. K.M. FIROZ

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 18/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 3548 of 2007

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Dated: 18-10-2007

O R D E R

The revision petitioner who was the accused in C.C. 406 of 1999 on the file of the J.F.M.-I, Mananthavady, for offences punishable under Sections 225 B and 353 I.P.C. challenges the conviction under Sec. 353 I.P.C. which survives after the judgment of the lower appellate court in Crl. Appeal 149 of 2003.

2. The case of the prosecution can be summarised as follows:-

On 27-3-1999 at about 11 a.m. P.w.2 who was the A.S. I. and his police party after searching the house of the accused for seizing his passport in Crime No. 58 of 1999 of Vellamunda police Station for an offence under section 379 I.P.C. was returning along with the accused for producing him before the Court. When they reached near the public road, the accused escaped from the lawful custody of the police party after assaulting them. The accused has thereby committed offences punishable under Sections 225 B and 353 I.P.C.

3. On the side of the prosecution 8 witnesses were examined as P.Ws 1 to 8 of whom P.Ws. 1 and 2 are members of the police party The prosecution got marked 7 documents as

Exts.P1 to P7. The accused did not adduce any defence evidence when called upon to do so. The learned Magistrate, after trial, as per judgment dated 3-7-2003 found the accused guilty of the offences charged again him. For his conviction under Sec. 225 B I.P.C. he was sentenced to simple imprisonment for three months and for the conviction under Section 353 I.P.C. he was sentenced to simple imprisonment for six months with a direction that the sentences shall run concurrently. Even though the revision petitioner preferred an appeal before the Sessions Court, Kalpetta as Crl.Appeal No. 149 of 2003, the learned Adll. Sessions Judge (Adhoc - I), Kalpetta as per judgment dated 11-05-2006 acquitted the revision petitioner of the offences punishable under Sec. 225 B I.P.C. but confirmed the conviction entered and the sentence passed under Sec. 353 I.P.C. to simple imprisonment for one month. Hence, this revision.

4. The learned counsel appearing for the revision petitioner assailed the conviction under Sec. 353 I.P.C. by contending that when the prosecution case that the revision petitioner attempted to escape from the lawful custody of the police has been disbelieved by the lower appellate court there was no need for the accused to assault the police officers as he

was not in lawful custody.

5. It is true that going by the finding of the lower appellate court, the prosecution has failed to prove that the revision petitioner was in lawful custody and therefore, there cannot be any attempt to escape from lawful custody. But that does not mean that the case of the prosecution that the revision petitioner assaulted P.Ws 1 and 2 who are police officers cannot be true or that the assault is inseparable part of escape from lawful custody. The trial Magistrate who had the unique advantage of seeing the witnesses and assessing their credibility had chosen to believe P.Ws 1 and 2 in this regard. The lower appellate court also did not find any good reason to disagree with the finding of the trial court in this connection. In the absence of any infrimity in the appreciation of evidence by the courts below, this Court sitting in revision will be loathe to interfere with the conviction recorded against the revision petitioner for the offence punishable under Sec. 353 I.P.C. The conviction is accordingly confirmed.

6. What now survives for consideration is the question as to whether the sentence of simple imprisonment for one month imposed by the lower appellate court for the conviction under

Sec. 353 I.P.C. is adequate or not . Having regard to the facts and circumstances of the case including the fact that the revision petitioner was not in lawful custody of the police officers whose version that the revision petitioner was arrested in connection with Crime No. 58 of 1999 was found to be false , I do not think that the revision petitioner deserves penal servitude by way of incarceration for his conviction under Section 353 I.P.C., I am of the view that an appropriate fine shall meet the ends of justice. Accordingly, for his conviction under Sec. 353 I.P.C. the revision petitioner is sentenced to pay fine of Rs. 3,000/- . The fine amount shall be deposited before the trial court within one month from today, failing which he shall undergo simple imprisonment for one month by way of default sentence.

Crl. Revision is disposed of as above.